

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WHITELAND WOODS, L.P. : CIVIL ACTION  
:   
v. :   
:   
TOWNSHIP OF WEST WHITELAND, et al. :   
:   
v. :   
:   
JOHN D. SNYDER : NO. 96-8086

MEMORANDUM and ORDER

Norma L. Shapiro, J.

October 21, 1997

Plaintiff Whiteland Woods, L.P. ("Whiteland Woods"), a subsidiary of Toll Brothers, in an action against West Whiteland Township (the "Township"), the West Whiteland Board of Supervisors (the "Board of Supervisors"), the West Whiteland Planning Commission (the "Planning Commission") and certain members of the Board of Supervisors and Planning Commission (collectively the "Township defendants"), pursuant to 42 U.S.C. § 1983, alleged violations of its rights guaranteed under the First and Fourteenth Amendments, the Pennsylvania Constitution and the Pennsylvania Sunshine Act, Pa. Stat. Ann. tit. 65 § 271, et seq. The Township defendants have filed a motion for summary judgment. For the reasons stated below, their motion will be granted.

FACTS

Toll Brothers and its subsidiary Whiteland Woods own approximately 162.5 acres of land in West Whiteland Township.

See Complaint ¶ 11. On June 24, 1996, Whiteland Woods filed with the Township a Planned Residential Development Plan ("PRD") application for a residential community. See id. at ¶ 12. The PRD application was placed on the agenda for the September 25, 1996 meeting of the Planning Commission. Snyder was present at the meeting to offer legal advice to the Planning Commission. See id. at ¶ 14.

Whiteland Woods arranged for a video camera operator to attend the meeting to record the proceedings. See id. at ¶ 15. Prior to the commencement of the meeting, Snyder consulted with Jack Newell ("Chairman Newell"), chairman of the Planning Commission, regarding the presence of Whiteland Woods' video camera. Snyder prepared a handwritten resolution barring the use of all video cameras at future Planning Commission meetings.<sup>1</sup> See id. at ¶ 17; Decl. of Jack Newell at ¶ 5, attached as Ex. 1 to Defs.' Mem. Supp. Summ. Judgment [hereinafter "Newell Decl."].

Thomas A. "Buck" Riley, Esq. ("Riley") presented Whiteland Woods's PRD application to the Planning Commission. See Newell Decl. at ¶ 6. The Planning Commission did not prevent Whiteland

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<sup>1</sup> The resolution provided in relevant part: "The following rules shall govern the use of mechanical/electrical recording and/or stenographic devices during public meetings: ... (5) No video taping or video recording and no additional lighting shall be employed ...." West Whiteland Planning Commission Minutes, dated September 25, 1996 at 11, attached as Ex. E to Pltff.'s Mem. Opp. Summ. Judgment [hereinafter "Planning Commission Minutes"].

Woods from videotaping the meeting, although members of the Planning Commission expressed displeasure at being recorded. See Complaint at ¶ 16; Newell Decl. at ¶¶ 6-9.

Snyder presented his handwritten resolution to the Planning Commission with the opinion that the resolution complied with federal and Commonwealth law. See Newell Decl. at ¶¶ 11-12. Members of the Planning Commission discussed the proposed resolution. Mike Greenberg ("Greenberg"), vice-president of Toll Brothers, and Riley participated in the discussion with the Planning Commission. See id. at ¶ 13. Chairman Newell informed Riley the Planning Commission did not request the resolution, but he believed the resolution was necessary to prevent Township residents appearing before the Planning Commission from being intimidated. See id. at ¶ 15. Other members of the Planning Commission expressed resentment at being videotaped. See id. at ¶ 9.

Greenberg stated he wanted a video record of the proceedings. Riley stated he believed the proposed resolution would violate the Pennsylvania Sunshine Act. See Planning Commission Minutes at 12. The Planning Commission voted in favor of the resolution by a vote of four to two. See Complaint at ¶ 19.

Whiteland Woods' counsel, stating Whiteland Woods' intent to videotape a meeting scheduled for October 9, 1996, wrote to the

Planning Commission on October 4, 1996. See id. at ¶ 22; Ex. 1 of Decl. of Thomas A. Riley, Esq. attached as Ex. C to Pltff.'s Mem Opp. Summ. Judgment [hereinafter "Riley Decl."]. Snyder replied on October 8, 1996 that if Whiteland Woods brought video recording equipment to the upcoming meeting, it would do so "at your own risk." Complaint at ¶ 23; Ex. B to Riley Decl.

The Board of Supervisors, following the lead of the Planning Commission, enacted Resolution 96-10 at its October 8, 1996 meeting to ban the use of video recording devices at Board of Supervisors meetings.<sup>2</sup> See Complaint at ¶ 29; Riley Decl. at ¶ 13.

Christopher P. Luning, Esq. ("Luning"), associate counsel for Whiteland Woods, and a video operator brought video recording equipment to the Planning Commission's October 9, 1996 meeting, see Complaint at ¶ 24; Newell Decl. at ¶ 23, set up the video recording equipment, but left the camera facing the wall. See Complaint at ¶ 26; Newell Decl. at ¶¶ 26-27. Officer John Curran ("Officer Curran") of the West Whiteland Township Police

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<sup>2</sup> Resolution 96-10 of the Board of Supervisors provided in relevant part: "The following regulations shall govern the use of electrical/mechanical recording equipment during public meetings of the Board: ... (c) Only audio recording or stenographic recording equipment may be used i.e. no video recording equipment shall be permitted ...." West Whiteland Township Board of Supervisors Resolution 96-10 at 1, attached as Ex. A to Pltff.'s Mem. Opp. Summ. Judgment [hereinafter "Resolution 96-10"].

Department was present at the meeting.<sup>3</sup> Officer Curran sat near the video recording equipment and informed Whiteland Woods' representatives they could not make a video recording of the meeting. See Complaint at ¶¶ 24-25; Newell Decl. at ¶¶ 24-25

Whiteland Woods filed a civil action on October 14, 1996 in the Court of Common Pleas of Chester County. Whiteland Woods sought injunctive relief and relief pursuant to the Pennsylvania Declaratory Judgments Act, 42 Pa. Cons. Stat. Ann. § 7531, et seq., for violation of the Pennsylvania Sunshine Act. See Complaint at ¶ 30; Ex. A to Pltff.'s Mem. Opp. Summ. Judgment. Whiteland Woods also sought a preliminary injunction barring the Township from enforcing the two resolutions. See Complaint at ¶ 31.

On October 16, 1996, James E. McErlane, Esq. ("McErlane"), acknowledging the Township could not enforce the resolutions according to Hain v. Board of Sch. Dir., 641 A.2d 661, 663-64 (Pa. Commw. Ct. 1994), wrote to the Court of Common Pleas on behalf of the Township. See Complaint at ¶ 32; Ex. A to Pltff.'s Mem. Opp. Summ. Judgment. The Township defendants waived their right to a hearing on the preliminary injunction and the Court of Common Pleas enjoined the Township defendants from enforcing or

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<sup>3</sup> Whiteland Woods, expressing surprise that police officers wear uniforms and carry firearms, places much emphasis on the fact that Officer Curran was "in full uniform and armed with a gun." Pltff.'s Mem. Opp. Summ. Judgment at 5, 23.

attempting to enforce the two resolutions or any other resolutions restricting the right to videotape public meetings.<sup>4</sup>

The Board of Supervisors and Planning Commission did not try to enforce their resolutions at any point after the Court of Common Pleas issued the injunction. In fact, Whiteland Woods has videotaped every Board of Supervisor's meeting since October 22, 1996. See Decl. of Diane S. Snyder at ¶ 9, attached as Ex. 2 to Defs.' Mem. Supp. Summ. Judgment [hereinafter Snyder Decl."]. However, the two resolutions remained "on the books."

Apparently, Whiteland Woods believed the Township was obligated to rescind the unenforceable resolutions immediately

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<sup>4</sup> There is no evidence of record that Whiteland Woods attempted to use video recording equipment at a Board of Supervisors meeting before the Court of Common Pleas issued the preliminary injunction.

The preliminary injunction provided in pertinent part that the Township defendants were enjoined from:

(1) enforcing or attempting to enforce the West Whiteland Planning Commission Resolution dated September 25, 1996;

(2) enforcing or attempting to enforce the West Whiteland Board of Supervisors Resolution dated October 8, 1996; and

(3) enforcing or attempting to enforce any rule, resolution, or regulation prohibiting video recording of any Township public meeting or the use of video taping equipment at any Township public meeting."

Whiteland Woods, L.P. v. Township of West Whiteland, No. 96-8774 (Chester County Ct. C.P. October 17, 1996) attached as Ex. A to Pltff.'s Mem. Opp. Summ. Judgment [hereinafter the "injunction"].

after the state court issued the injunction. Whiteland Woods, seeking relief pursuant to 41 U.S.C. § 1983 for alleged violations of its rights under the First and Fourteenth Amendments, the Pennsylvania Constitution and the Pennsylvania Sunshine Act, filed a second lawsuit on November 13, 1996 in the Court of Common Pleas for Chester County. Whiteland Woods sought damages in excess of \$2,100,000 based on the Planning Commission's decision to prevent it from videotaping the Planning Commission meeting on October 9, 1996. Whiteland Woods also sought relief based on the Board of Supervisor's and Planning Commission's failure to rescind the unenforceable resolutions. Whiteland Woods sought additional injunctive relief as well.

The Planning Commission rescinded its resolution on December 11, 1996. The Board of Supervisors rescinded Resolution 96-10 on December 18, 1996. See Pltff.'s Mem. Opp. Summ. Judgment at 8; Newell Decl. at ¶¶ 32-33; Snyder Decl. at ¶ 11.

The Township defendants, alleging original jurisdiction based on 28 U.S.C. §§ 1331 and 1343, removed the case to this court pursuant to 28 U.S.C. § 1441. Arguing that Snyder advised the Planning Commission it legally could adopt the resolution barring video recording equipment, the Township defendants filed a third-party complaint against Snyder.

The Township defendants filed the present motion for summary judgment pursuant to Federal Rule of Civil Procedure 56.

## DISCUSSION

### **I. Standard of Review**

Summary judgment may be granted only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). A defendant moving for summary judgment bears the initial burden of demonstrating there are no facts supporting the plaintiff's claim; then the plaintiff must introduce specific, affirmative evidence there is a genuine issue for trial. See Celotex Corp. v. Catrett, 477 U.S. 317, 322-324 (1986). "When a motion for summary judgment is made and supported as provided in [Rule 56], an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in [Rule 56], must set forth specific facts showing that there is a genuine issue for trial." Fed. R. Civ. P. 56(e).

The court must draw all justifiable inferences in the non-movant's favor. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). A genuine issue of material fact exists only when "the evidence is such that a reasonable jury could return a verdict for the non-moving party." Id. at 248. The non-movant must present sufficient evidence to establish each element of its case for which it will bear the burden at trial. See Matsushita



Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 585-86 (1986).

The Township defendants move for summary judgment on the ground that, even viewing the facts in the light most favorable to the plaintiff, Whiteland Woods is entitled to no relief under the First or Fourteenth Amendments or the applicable provisions of state law.

## **II. First Amendment**

Whiteland Woods, arguing the Township defendants violated its First Amendment<sup>5</sup> rights, filed this action pursuant to 42 U.S.C. § 1983.<sup>6</sup> Whiteland Woods apparently seeks damages based

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<sup>5</sup> The First Amendment states: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." U.S. Const. amend. 1. The states are bound by the First Amendment through incorporation under the Fourteenth Amendment. See Edwards v. South Carolina, 372 U.S. 229, 235 (1963); Stromberg v. California, 283 U.S. 359, 368 (1931).

<sup>6</sup> The statute provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress....

42 U.S.C. § 1983.

on two events: 1) the Planning Commission's decision to prevent it from videotaping the October 9, 1996 meeting; and 2) the failure of the Planning Commission and the Board of Supervisors to rescind their resolutions immediately following the issuance of the state court injunction. As to the second claim, the court cannot conceive of any possible cause of action for the failure of a municipal board to rescind an enjoined resolution. Neither the Planning Commission nor the Board of Supervisors attempted to enforce the resolutions after they were enjoined. The Planning Commission and the Board of Supervisors were under no obligation to rescind their resolutions; the Township simply could not and did not enforce them.<sup>7</sup> Whiteland Woods suffered no cognizable injury by the failure of the Planning Commission and the Board of Supervisors to rescind their resolutions during the two months following the issuance of the injunction.

As to the first claim, Whiteland Woods had a statutory right under the Pennsylvania Sunshine Act to attend the Planning Commission's meeting on October 9, 1996. See Pa. Stat. Ann. tit. 65 § 274. The issue is whether Whiteland Woods, having a

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<sup>7</sup> Whiteland Woods points to the agenda stating Resolution 96-10 was supposed to be considered (and presumably rescinded) at the October 22, 1996 Board of Supervisor's meeting. See Complaint at ¶¶ 36-38; Pltff.'s Mem. Opp. Summ. Judgment at 7. Apparently the Board of Supervisors did not address the resolution at that meeting. Whiteland Woods' baseless claim is premised on its belief it has the right as a citizen to peruse the statutory codes to weed out obsolete provisions. No such right exists.

statutory right to attend the meeting, had a constitutional right to use video recording equipment. See Cirelli v. Town of Johnston Sch. Dist., 897 F. Supp. 663, 669 (D.R.I. 1995) (if plaintiff was rightfully on public property, only issue was whether she could use video recording equipment).

The use of electronic equipment to record and broadcast public events implicates the First Amendment. The public has an interest in newsworthy events. "It is now well established that the Constitution protects the right to receive information and ideas. 'This freedom (of speech and press) ... necessarily protects the right to receive ....'" Stanley v. Georgia, 394 U.S. 557, 564 (1969) (quoting Martin v. City of Struthers, 319 U.S. 141, 143 (1943)); see Kleindienst v. Mandel, 408 U.S. 753, 762-64 (1972); Lamont v. Postmaster General, 381 U.S. 301, 305-07 (1965).

A "'major purpose of [the First] Amendment was to protect the free discussion of governmental affairs.'" Globe Newspaper Co. v. Superior Court, 457 U.S. 596, 604 (1982) (quoting Mills v. Alabama, 384 U.S. 214, 218 (1966)). The First Amendment was designed to ensure "discussion of governmental affairs is an informed one." Id. at 604-05 (quoted in Publicker Indus., Inc. v. Cohen, 733 F.2d 1059, 1068 (3d Cir. 1984)). Thus, the public had a First Amendment interest in Whiteland Woods' proposed videotaping of the Planning Commission meeting.

When governmental entities impose neutral restrictions on First Amendment activities in public fora, the court must analyze the limitations as time, place and manner restrictions.<sup>8</sup> See Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 578 (1980). A government regulation will be upheld if it is "reasonable," id. at 582 n.18, promotes "significant governmental interests," Young v. American Mini Theaters, Inc., 427 U.S. 50, 63 n.18 (1976), and if the restriction does not "unwarrantedly abridge ... the opportunities for the communication of thought." Richmond Newspapers, Inc., 448 U.S. at 582 n.18. Time, place and manner restrictions are not subject to strict scrutiny. See Globe Newspaper Co., 457 U.S. at 607 n.17.

The First Amendment is not violated by absolute bans on video cameras or still-picture cameras in courtrooms. A judge may constitutionally prohibit reporters from bringing cameras into the courtroom, just as the "news reporter is not permitted to bring his typewriter or printing press." Estes v. Texas, 381 U.S. 532, 540 (1965). Public policy may favor the use of cameras in courtrooms, but "[n]o constitutional provision guarantees a

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<sup>8</sup> Whiteland Woods argues the Planning Commission only enacted the resolution to prevent Whiteland Woods from video recording any meetings after September 25, 1996. See Pltff.'s Mem. Opp. Summ. Judgment at 4. Accepting that allegation as true, it does not change the fact that the resolution was neutrally applied to all video recording; the Planning Commission did not restrict Whiteland Woods only based on the content of the message Whiteland Woods was attempting to spread.

right to televise trials." Id. at 588 (Harlan, J., concurring). "There is a long leap ... between a public right under the First Amendment to attend trials and a public right under the First Amendment to see a given trial televised." Westmoreland v. CBS, 752 F.2d 16, 23 (2d Cir. 1984), cert. denied sub nom., CNN, Inc. v. United States District Court, 472 U.S. 1017 (1985).

The First Amendment does not guarantee the right to record or broadcast live witness testimony or other trial proceedings. See Nixon v. Warner Comm., Inc., 435 U.S. 589, 610-11 (1978); see also Conway v. United States, 852 F.2d 187, 188 (6th Cir.), cert. denied, 488 U.S. 943 (1988); United States v. Edwards, 785 F.2d 1293, 1295 (5th Cir. 1986); Westmoreland v. CBS, 752 F.2d 16, 23-24 (2d Cir. 1984), cert. denied sub nom., CNN, Inc. v. United States District Court, 472 U.S. 1017 (1985); United States v. Yonkers Bd. of Ed., 747 F.2d 111, 113 (2d Cir. 1984); United States v. Hastings, 695 F.2d 1278, 1284 (11th Cir.), cert. denied sub nom., Post-Newsweek, Fla., Inc. v. United States, 461 U.S. 931 (1983); Combined Comm. Corp. v. Finesilver, 672 F.2d 818, 821 (10th Cir. 1982).

Restrictions on the use of video cameras in other settings have been held permissible. In Garrette v. Estelle, 556 F.2d 1274 (5th Cir. 1977), cert. denied, 438 U.S. 914 (1978), a news cameraman, seeking to film an execution in a Texas prison, contended the First Amendment interest in disseminating

newsworthy information to the public prohibited the state from restricting his ability to film the execution. See id. at 1275. This argument was rejected because there were other methods of informing the public of the execution. See id. at 1279.

In Johnson v. Adams, 629 F. Supp. 1563 (E.D. Tex. 1986), county commissioners prohibited the use of video recording equipment during their meetings. The court, relying on the fact that the United States House of Representatives and Senate then banned the use of cameras during their sessions, dismissed the complaint.

The time, place and manner balancing weighs in favor of the Planning Commission. The Planning Commission does not deny that Whiteland Woods' decision to use the video camera at the September 25, 1996 meeting led it to enact the resolution. After its experience at that meeting, the Planning Commission concluded a ban on video cameras was in the best interest of the public. The members feared some Township residents would be afraid to speak freely at meetings if cameras were present, see Newell Decl. at ¶¶ 15-16, and the presence of cameras could intimidate participants in Planning Commission hearings. See id. at ¶ 17. Some members thought Whiteland Woods was using a camera to harass the Planning Commission itself. See id. at 18. The ability and willingness of the public to participate in hearings before the Planning Commission is a "substantial governmental interest."

Richmond Newspapers, Inc., 448 U.S. at 582 n.18.

The Planning Commission's resolution did not affect other means for the public to gain access to information concerning Planning Commission meetings. No restrictions on public access to Planning Commission meetings were imposed; spectators were permitted to use audio recording devices; and spectators could employ stenographic recording. See Planning Commission Minutes at 11-12. The availability of audio recording provided adequate opportunity for communication to the public of the county commission's activities. See Johnson, 629 F. Supp. at 1564; see also United States v. Kerley, 753 F.2d 617, 622 (7th Cir. 1985) (use of audio tapes in criminal proceeding provided adequate recording for the news media).

Reporters and members of the media were not prevented from attending the Planning Commission meetings and taking notes. See Estes, 381 U.S. at 541-42 ("[R]eporters of all media, including television, are always present if they wish to be and are plainly free to report whatever occurs in open court through their respective media."); Garrett, 56 F.2d at 1279 (pool reporters allowed to witness the execution, in lieu of televised recording). Whiteland Woods's apparent belief "in the Chinese proverb that '[o]ne picture is worth more than ten thousand words,'" Yonkers Bd. of Ed., 747 F.2d at 113 (citation omitted), is irrelevant; the resolution was "reasonable" and did not

"unwarrantedly abridge ... the opportunities for the communication of thought." Richmond Newspapers, Inc., 448 U.S. at 582 n.18. But see CNN, Inc. v. ABC, Inc., 518 F. Supp. 1238, 1245 (N.D. Ga. 1981) (balance weighed in favor of the media that wanted to televise a presidential press conference). Viewing the plaintiff's factual allegations in the most favorable light, Whiteland Woods has stated no claim under the First Amendment.<sup>9</sup>

### **III. Substantive Due Process**

Whiteland Woods claims its substantive due process rights under the Fourteenth Amendment<sup>10</sup> were violated when Officer Curran informed plaintiff's cameraman and counsel they could not videotape the October 9, 1996 meeting. Whiteland Woods does not base its substantive due process claim on any alleged violation of its fundamental rights under the First Amendment. See

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<sup>9</sup> Whiteland Woods mistakenly relies on Belcher v. Mansi, 569 F. Supp. 379 (D.R.I. 1983) and Maurice River Tp. Bd. of Ed. v. Maurice River Tp. Teachers Assoc., 455 A.2d 563 (N.J. Sup. Ct. Chan. Div. 1982), aff'd, 475 A.2d 59 (N.J. Sup. Ct. App. Div. 1984) for the proposition that the First Amendment prohibits local governmental bodies from restricting video recording. In Belcher, the court stated it "need not resolve" the "arcane" First Amendment issue, because the state's open meeting law satisfied the plaintiff's claim. Belcher, 569 F. Supp. at 382. The Maurice court stated "this case turns on the New Jersey Constitution, Art. I, par. 6." Maurice, 455 A.2d at 565. Neither case is applicable here.

<sup>10</sup> The Fourteenth Amendment provides no "State shall deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend XIV.



Pltff.'s Mem. Opp. Summ. Judgment at 21.<sup>11</sup> The substantive due process claim is predicated on "what is arguably the most frightening and egregious abuse of governmental power which is the illegal deprivation of liberty by a municipal government though the raw use of its police force." Id. at 21-22. Apparently Whiteland Woods objects to the fact that the police officer present at the Planning Commission meeting informed plaintiff's personnel they could not use the video recorder.

Unless a plaintiff's claim alleges violation of a fundamental right, substantive due process analysis subjects the government's action to rational basis review. See Midnight Sessions, Ltd v. City of Phila., 945 F.2d 667, 682 (3d Cir. 1991), cert. denied, 503 U.S. 984 (1992); Rogin v. Bensalem Township, 616 F.2d 680, 689 (3d Cir. 1980), cert. denied, 450 U.S. 1029 (1981). The Due Process Clause was "'intended to secure the individual from the arbitrary exercise of the powers of government.'" Daniels v. Williams, 474 U.S. 327, 331 (1986) (quoting Hurtado v. California, 110 U.S. 516, 527 (1884)). The government must have "arbitrarily abused its power" and been "motivated by bias, bad faith, or improper motive." Midnight Sessions, Ltd., 945 F.2d at 683.

The police officer was requiring compliance with a duly-

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<sup>11</sup> Whiteland Woods disclaims any procedural due process violation. See Pltff.'s Mem. Opp. Summ. Judgment at 21 n.2.

enacted resolution the Planning Commission believed was in the best interest of the public. See Newell Decl. at ¶¶ 15-17. The Planning Commission discussed its reasons with plaintiff's agents at the September 25, 1996 meeting. See id. at ¶¶ 13-19. It acted in reliance on the advice of the Township's solicitor. See id. at ¶ 12. Whiteland Woods claims Officer Curran was there to intimidate plaintiff's representatives, see Complaint at ¶¶ 24-25, but a police officer's verbal instruction to comply with the law does not, without more, amount to "arbitrary action of government." Wolff v. McDonnell, 418 U.S. 539, 558 (1974); see Midnight Sessions, Ltd., 945 F.2d at 683. Regardless of the Planning Commission's motivation in requesting Officer Curran's presence at the meeting, Whiteland Woods has presented insufficient evidence to show a violation of substantive due process.

#### **IV. Injunctive Relief**

Whiteland Woods seeks injunctive relief not only under the First and Fourteenth Amendments but also under similar provisions of the Pennsylvania Constitution and the Sunshine Act. The Sunshine Act does not provide any damage remedy. The statute permits courts to enter injunctive relief, see Pa. Stat. Ann. tit. 65 § 283; invalidate governmental action taken at an unlawfully-closed meeting, see id.; and impose criminal penalties on government officials who participated in unlawfully-closed

meetings, see Pa. Stat. Ann. tit. 65 § 284. Thus, Whiteland Woods' claim under the Sunshine Act could only be for injunctive relief, not damages.

The Court of Common Pleas entered an injunction barring the Township from enforcing or attempting to enforce the two resolutions, pursuant to the Sunshine Act. The Township made no effort to enforce the enjoined resolutions since then, and subsequently rescinded them. See Newell Decl. at ¶ 32; Snyder Decl. at ¶ 11. Whiteland Woods has since videotaped meetings of the Board of Supervisors, see Snyder Decl. at ¶ 9; the Township has not tried to prevent it from using video recording equipment.

Whiteland Woods' claim for injunctive relief pursuant to the First and Fourteenth Amendments, the Pennsylvania Constitution or the Sunshine Act is moot. Federal courts cannot "sit to decide hypothetical issues or ... give advisory opinions." Princeton Univ. v. Schmid, 455 U.S. 100, 102 (1982). A federal court can only issue an injunction if the plaintiff establishes the defendant's conduct is illegal and will continue. See Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 8 (1978) (citing United Trans. Union v. Michigan Bar, 401 U.S. 576, 584 (1971)). Although Whiteland Woods claims this situation is "capable of repetition" without review, see SEC v. Sloan, 436 U.S. 103, 109-10 (1978), the Township has acted in good faith since the injunction was issued in October, 1996. If violated, relief may

be obtained from the issuing state court. This claim must be dismissed for lack of jurisdiction.

#### **V. Pennsylvania Constitution**

Whiteland Woods argues the Planning Commission's interference with its right to videotape the meeting on October 9, 1996 violated various provisions of the Pennsylvania Constitution. The Pennsylvania Supreme Court "has long emphasized that, in interpreting a provision of the Pennsylvania Constitution, we are not bound by the decisions of the United States Supreme Court which interpret similar (yet distinct) federal constitutional provisions." Commonwealth v. Edmunds, 586 A.2d 887, 894 (Pa. 1991). It "is both important and necessary that we undertake an independent analysis of the Pennsylvania Constitution, each time a provision of that fundamental document is implicated." Id. at 894-95. This court will not undertake interpreting the Pennsylvania Constitution to determine whether it requires local governmental bodies to allow video recording activities during meetings or permits an award of damages against a governmental body for not allowing it. Because the court is dismissing Whiteland Woods' federal claims, it will decline to exercise supplemental jurisdiction over the related claims arising under the Pennsylvania Constitution. See 28 U.S.C. § 1367(c)(3).

#### **CONCLUSION**

Whiteland Woods has alleged no facts entitling it to relief under the First or Fourteenth Amendments. Any claim for injunctive relief is moot. The court will remand the related claims under the Pennsylvania Constitution to the Court of Common Pleas for Chester County where this action arose.<sup>12</sup>

An appropriate order follows.

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<sup>12</sup> The court need not address the Township defendants' additional arguments for legislative or qualified immunity.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WHITELAND WOODS, L.P. : CIVIL ACTION  
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TOWNSHIP OF WEST WHITELAND, et al. :   
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JOHN D. SNYDER : NO. 96-8086

ORDER

AND NOW, this 21st day of October, 1997, upon consideration of the Township defendants motion for summary judgment, plaintiff Whiteland Woods, L.P.'s response thereto, and in accordance with the attached Memorandum, it is hereby **ORDERED** that:

1. As to Count I, alleging violations of the First and Fourteenth Amendments, the Township defendants' motion for summary judgment is **GRANTED**; judgment is **ENTERED** in favor of the Township defendants and against plaintiff Whiteland Woods, L.P.

2. Count II of Whiteland Woods' Complaint, alleging violation of the Pennsylvania Constitution, and the Township Defendants third-party claim against John D. Snyder for indemnification arising out of any violation of the Pennsylvania Constitution, are **REMANDED** to the Court of Common Pleas for Chester County for further proceedings.

3. Count III of Whiteland Woods' Complaint, seeking injunctive relief, is **DENIED AS MOOT**.

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Norma L. Shapiro, J.